

LSK&D #: 630-0035 / 4842-9499-6305

LESTER SCHWAB KATZ & DWYER, LLP

500 Frank W. Burr Blvd., 5th Floor, Suite 31

Teaneck, New Jersey 07666

(973) 912-9501

Attorneys for Defendants

LAND AIR EXPRESS OF NEW ENGLAND LTD. s/h/a

LAND AIR EXPRESS,NE,LTD and ERIC J. FOSTER

-----X
VICTOR GUTIERREZ and MARTA AGURTO his
wife

Plaintiff,

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY**

Docket No.: HUD-L-1146-17

vs.

NOTICE OF REMOVAL

LAND AIR EXPRESS,NE,LTD; ERIC J. FOSTER
and FARMERS INSURANCE COMPANY

Defendant.

-----X
TO: **THE JUDGES OF THE SUPERIOR COURT OF NEW JERSEY,
HUDSON COUNTY**

MICHAEL C. KAZER, ESQUIRE

69 Washburn Street

Jersey City, New Jersey 07306

(201) 792-9766

Attorneys for Plaintiffs

PLEASE TAKE NOTICE, that on the 4th day of October, 2017, defendants, LAND AIR EXPRESS OF NEW ENGLAND LTD. s/h/a LAND AIR EXPRESS, NE, LTD; and ERIC J. FOSTER, filed a Petition for Removal, a copy of which is annexed hereto, with the United States District Court, District of New Jersey.

Dated: Teaneck, New Jersey
October 4, 2017

LESTER SCHWAB KATZ & DWYER, LLP

Attorneys for Defendants

LAND AIR EXPRESS OF NEW ENGLAND LTD.

s/h/a LAND AIR EXPRESS, NE, LTD and ERIC J.

FOSTER

By: 

Robyn J. Leader

LSK&D #: 630-0035/ 4842-9499-6305

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X
VICTOR GUTIERREZ and MARTA AGURTO his
wife

Plaintiff,

vs.

LAND AIR EXPRESS, NE, LTD; ERIC J. FOSTER
and FARMERS INSURANCE COMPANY

Defendant.
-----X

TO: **THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Docket No.:

PETITION FOR REMOVAL

ASSIGNED TO:

TRIAL BY JURY DEMANDED

The Notice of Removal of defendants, LAND AIR EXPRESS OF NEW ENGLAND LTD. s/h/a LAND AIR EXPRESS, NE, LTD; and ERIC J. FOSTER, state:

1. On or about March 16, 2017, a civil action was commenced by the plaintiffs against the defendants in New Jersey State Superior Court, Law Division, Hudson County, under Docket Number HUD-L-1146-17, entitled *Victor Gutierrez and Martha Agurto, his wife v. Land Air Express, NE, Ltd., Eric J. Foster and Farmers Insurance Company*. (The Summons and Complaint are annexed hereto as **Exhibit "A"**).

2. An Answer to the Complaint was served on behalf of defendants, LAND AIR EXPRESS OF NEW ENGLAND LTD. s/h/a LAND AIR EXPRESS, NE, LTD; and ERIC J. FOSTER, on or about June 8, 2017. (**Exhibit "B"**).

3. To date, co-defendant, Farmers Insurance Company, has not served an Answer to plaintiffs' Complaint.

4. Although the citizenship of the parties is completely diverse under 28 U.S.C. Section 1332(a) as stated below, and the defendants are not citizens of the State of New Jersey,

the action was not removable pursuant to 28 U.S.C. Section 1441 *et seq.* upon commencement because the Complaint did not demand a specific amount for damages.

5. Plaintiff, Victor Gutierrez, was at the time this action was commenced, when the action was removed, and is currently now a citizen of the state of New Jersey, residing in Hudson County, at 516 Paterson Plank Road, 2F, Jersey City, New Jersey 07307. (See **Exhibit “A”**).

6. Upon information and belief, plaintiff Martha Agurto, plaintiff Victor Gutierrez’s wife, resides in Hudson County, New Jersey, at 516 Paterson Plank Road, 2F, Jersey City, New Jersey 07307, and so resided at the aforementioned residence when this action was commenced. (See **Exhibit “A”**).

7. Defendant, Land Air Express of New England Ltd. s/h/a Land Air Express, NE, LTD, was at the time this action was commenced, was and still is a citizen of the state of Vermont, as it is a foreign business corporation incorporated in the state of Vermont, with its principal place of business located at 59 Avenue C, Williston, Vermont 05495.

8. Defendant, Eric J. Foster, was at the time this action was commenced, when the action was removed, and is currently now a citizen of the state of Maine, having a residence located at 8 Foster Road, Benton, Maine 04901.

9. Defendant, Farmers Insurance Company, Inc. s/h/a Farmers Insurance Company, was at the time this action was commenced, was and still is a citizen of the state of California, as it is a foreign business corporation incorporated in the state of California, with its principal place of business located at 6301 Owensmouth Avenue, Woodland Hills, California 91367, and a chosen jurisdiction of Kansas.

10. To date, co-defendant Farmers Insurance Company has not been served with the Summons and Complaint, as confirmed by a recent phone call with the PIP Adjuster for Farmers, Nicole Mrowczynski.

11. Additionally, on August 5, 2017, the New Jersey State Superior Court, Law Division, Hudson County issued a Notice for Lack of Prosecution and a Dismissal Warning, for plaintiffs' counsel's failure to take any action, as to Farmers Insurance Company, such as moving for default or filing the Affidavit of Service with the Court. (**Exhibit "C"**).

12. This case was not "removable" to Federal Court until September 5, 2017, when plaintiffs' counsel asserted that plaintiffs are entitled to damages in the amount of \$356,919.29. (**Exhibit "D"**). Based upon the aforementioned, this Petition is timely as having been filed within thirty (30) days of September 5, 2017, and less than one year has elapsed since the action was commenced, consistent with 28 U.S.C. section 1446(c)(1).

WHEREFORE, Petitioners, Land Air Express of New England, Ltd. s/h/a Land Air Express, NE, LTD and Eric J. Foster, apply that this action now pending against them in New Jersey State Superior Court, County of Hudson, Law Division, be removed from that venue to this Court.

Dated: Teaneck, New Jersey
October 4, 2017

Respectfully submitted,

LESTER SCHWAB KATZ & DWYER, LLP

By: 

Robyn J. Leader, Esq.

Attorneys for Defendants

LAND AIR EXPRESS OF NEW ENGLAND LTD.

s/h/a LAND AIR EXPRESS, NE, LTD and ERIC J.

FOSTER

500 Frank W. Burr Blvd., 5th Floor, Suite 31

Teaneck, New Jersey 07666

(973) 912-9501

Our File No: 630-0035

TO:

MICHAEL C. KAZER, ESQUIRE
69 Washburn Street
Jersey City, New Jersey 07306
(201) 792-9766
Attorneys for Plaintiffs